



May 13, 1999

Mr. John Schomburger  
Assistant District Attorney  
Criminal District Attorney's Office – Collin County  
210 S. McDonald, Suite 324  
McKinney, Texas 75069

OR99-1325

Dear Mr. Schomburger:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124050.

The Collin County Criminal District Attorney's Office (the "district attorney") received a request from an attorney for a variety of information concerning the "investigation file . . . of sexual assault and/or assault occurring at Lin-Mar Medical Center, and involving Jon Patterson and Linda Martin during 1998." In response to the request, you submit to this office for review the information which you assert is responsive. You contend that the submitted records are excepted from required public disclosure by sections 552.003, 552.101, 552.108 and 552.111 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

We first consider your assertion that a portion of the submitted records constitutes records of the judiciary. This office has previously held that where a district attorney, acting as an agent of the grand jury, gathers information pursuant to a subpoena, the information is deemed to be in the constructive possession of the grand jury despite the fact that the information is in the actual possession of the district attorney. Open Records Decision No. 411 (1984). Because section 552.003(b) of the Government Code specifically excludes the judiciary, of which the grand jury is a part, from the provisions of the act, we conclude that the grand jury records are not subject to the provisions of act, and therefore need not be

disclosed.<sup>1</sup> However, to the extent that the submitted information, which you have classified as grand jury records, is not within the constructive possession of the grand jury, we must consider whether any of the claimed exceptions are applicable to the information.

We next consider whether the requested records contain information that may be confidential and excepted from disclosure under section 552.101, in conjunction with section 261.201 of the Family Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code reads as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with . . . [the Family] code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under . . . chapter [261 of the Family Code] and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

Most of the submitted information consists of documents which we believe are “reports, records, communications, . . . and working papers used or developed” in an investigation conducted under and subject to chapter 261 of the Family Code. Because you have not cited any specific rule that the district attorney has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, most of the submitted records are confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Consequently, based on section 552.101, the district attorney must withhold the “files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an

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<sup>1</sup>We also note that article 20.02(a) of the Code of Criminal Procedure states that “[t]he proceedings of the grand jury shall be secret.” Thus, information that reveals the proceedings of the grand jury is confidential under article 20.02(a) of the Code of Criminal Procedure and excepted from disclosure under section 552.101 of the Government Code. However, the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney. Open Records Decision No. 513 (1988).

investigation” pursuant to section 261.201(a) of the Family Code.<sup>2</sup> However, as for the documents which were created by the district attorney as part of the prosecution of the case, we believe that such records are not covered by section 261.201 of the Family Code. Nor have you established that section 261.201 protects the remaining documents. Therefore, you may not withhold the prosecution records under section 261.201. Consequently, we next consider whether the remaining records may be withheld under your other claimed exceptions.

Section 552.108, the “law enforcement exception,” provides in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

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<sup>2</sup>We note that if the investigation has been referred to the Department of Protective and Regulatory Services (“DPRS”), a parent who is a requestor may be entitled to access to the DPRS records. *See* Fam. Code § 261.201(f); 40 T.A.C. § 700.103. Section 261.201(f) of the Family Code provides that DPRS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Fam. Code § 261.201(f). Although we do not address here whether the requestor is entitled to some of the requested information, we do note that the requestor, as a “representative” of the child, may be entitled to review the information in the possession of DPRS.

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. A review of the records at issue reveals that the prosecution of this case was "no billed" by the Collin County Grand Jury. Based on your arguments and submitted information, we find that you have shown the applicability of section 552.108(a)(2) to the information at issue, since the investigation *did not* result in conviction or deferred adjudication.

As we resolve your request under section 552.003, 552.101 and 552.108, we need not consider your other claimed exceptions at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A large, stylized handwritten signature in black ink that reads "Sam Haddad". The signature is written over the printed name "Sam Haddad".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 124050

Encl: Submitted documents

cc: Ms. Staci Pirnar  
Bellinger & DeWolf  
750 N. St. Paul Street-Suite 900  
Dallas, Texas 75201  
(w/o enclosures)